

Application Serial No. 10/664,645
Attorney Docket No. 86012-34000-USPT

REMARKS

Claims 1-74 are pending in the present application, of which claims 70-74 have been withdrawn from consideration. By submission of the amendment to the claims above, claims 20-33, 47-50, 61-65, 70-74 are hereby canceled without prejudice, though Applicant reserves the right to prosecute these claims in the future; and claims 1, 43, and 56 are amended to more clearly define Applicant's invention. Specifically, amended claims 1, 43, and 56 recite the feature of the lid "being pivotally connected to the base by the hinge between a closed position to engage the base upon closure of the container and an open position to disengage the base upon opening of the container". Support for these amendments is found throughout the Specification, as filed, and for example in paragraphs 0013, 0037-0038, and FIGS. 1, 2, 5, 6. Thus, no new matter is introduced by these amendments.

Applicant respectfully requests reconsideration in view of the remarks below.

U.S.C. § 102(b) Rejections

The Examiner rejected claims 20-25, 47-50, and 61-65 as allegedly being anticipated by Oakes et al. (US 6,688,487). By entry of the amendments to the claims detailed above, claims 20-25, 47-50, and 61-65 have been canceled without prejudice, thereby rendering the U.S.C. 102(b) rejection moot.

U.S.C. § 103(a) Rejections

The Examiner rejected claims 1-11, 13-15, 17-28, 30, 32-40, 42-69 as allegedly being obvious over Sellari et al. (US 2005/0017007) in view of Oakes. The Examiner further rejected claims 12, 16, 29, 31, and 41 as allegedly being obvious over Sellari in view of Oakes and further in view of Stevens et al. (US 6,087,447).

Applicant respectfully traverses each of these rejections.

Amended Claims 1, 43, and 56:

Applicant respectfully submits that none of the prior art cited, individually or in combination, disclose all of the limitations of the claims, as recited in amended claims 1, 43 and 56.

Amended claims 1, 43, and 56 recite, *inter alia*, a lid "being pivotally connected to the base by the hinge between a closed position to engage the base upon closure of the container and an open position to disengage the base upon opening of the container". Rather, and in distinct contrast with the claimed invention, Sellari discloses a container which is "intended to prevent and deter opening the container without first removing the frangible strip 18 from the hinge 16"(emphasis added) as stated in paragraph 0050. Sellari further states in paragraph 0063 that hinge strip 18 "must be removed before cover portion 114 can be readily removed from base portion 112" (emphasis added), and that once the hinge strip 18 is removed, it is not replaceable (see paragraph 0055). In other words, the frangible strip 18 must first be ruptured or torn away, thereby disconnecting and destroying the hinge 16, in order for the Sellari container to be opened. This is in direct contrast with the hinge as claimed in the present invention.

Accordingly, Sellari does not disclose, and indeed expressly teaches away from, a lid that is "pivotally connected to the base by the hinge between a closed position to engage the base upon closure of the container and an open position to disengage the base upon opening of the container", as claimed.

Furthermore, the deficiencies of Sellari are not remedied by Oakes, which is explicitly directed to "containers having a separate cup and lid which, when attached to close the container, provide a continuous seal and locked engagement" (emphasis added) (see column 1, lines 7-8). Thus there is no disclosure or suggestion of a hinge feature whatsoever in Oakes. In fact, Oakes teaches away from a hinge in that it is expressly stated that "it may be desirable to remove the lid from the cup" (column 4, lines 24-25) thereby precluding the presence of a hinge.

Consequently, neither Sellari nor Oakes, taken alone or in combination disclose a lid "being pivotally connected to the base by the hinge between a closed position to engage the base upon closure of the container and an open position to disengage the base upon opening of the container", as recited in amended claims 1, 43, and 56. Moreover, dependent claims 2-19, 44-46, 57-60 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For these reasons, Applicant respectfully requests that the rejections set forth above be withdrawn and the claims allowed.

Previously Presented Claims 34, 51, 55, 66:

Applicant respectfully submits that none of the prior art cited, individually or in combination, disclose all of the limitations of the claims, as recited in previously presented claims 34, 51, 55, 66.

Claims 34, 51, 55, 66 recite, *inter alia*, "a hinge being connected to the base, the hinge when in a closed position comprising a first generally horizontal portion, a second generally horizontal portion, and a first generally vertical portion that are integrally connected to each other, the second generally horizontal portion being folded over the first generally horizontal portion, the first generally vertical portion extending generally downwardly from the second generally horizontal portion towards the bottom wall".

In contrast with the present invention, Sellari discloses a removable hinge having a frangible pull strip 18. Sellari does not disclose a hinge comprising first and second horizontal portions, nor does Sellari disclose the second horizontal portion being folded over the first horizontal portion. Instead, the hinge 16 of Sellari, as illustrated in FIG. 4, is formed from projecting arms 36 and 38, neither of which are horizontal as claimed in the present invention, let alone configured such that a second horizontal portion is folded over a first horizontal portion as claimed. Additionally, the hinge 16 of Sellari does not disclose a vertical portion extending downwardly from the second horizontal portion as claimed. Furthermore, Sellari is expressly limited to a lid that is attached to a base through a frangible hinge. Therefore, any teaching of a recloseable hinge, as disclosed in the present invention, would directly contradict the explicit objective of Sellari which is to provide a tamper-evident hinge prohibiting opening of the container unless the hinge is first disconnected and destroyed. The hinge of the present invention is further distinguished from Sellari in that the hinge of the present invention further provides the surprising benefits of improved handling and performance characteristics. These surprising benefits arising from the geometry and location of the hinge with respect to the seal which facilitates the user's opening and closing of the container, as well as providing enhanced tactile and visual confirmation that a proper seal has been established.

As discussed above, the Oakes reference does not disclose a hinge at all, and thus can not be relied upon to solve the deficiencies of the Sellari reference. Accordingly, none of the prior art, taken alone or in combination disclose the features of the hinge as recited in claims

Application Serial No. 10/664,645
Attorney Docket No. 86012-34000-USPT

34, 51, 55, 66. Moreover, dependent claims 35-42, 52-54, 67-69 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For these reasons, Applicant respectfully requests that the rejections set forth above be withdrawn and the claims allowed.

Formal Request for Interview

In the event that the Examiner does not find the application to be in condition for allowance, Applicant respectfully requests an interview with the Examiner to discuss the present application and the prior art of record, and to provide assistance or additional information as required. In this event, the Examiner is respectfully requested to telephone the Applicant's Attorney to schedule a mutually convenient date and time.

Application Serial No. 10/664,645
Attorney Docket No. 86012-34000-USPT

CONCLUSION

On the basis of the foregoing Amendment and Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant requests that in filing a Request for Continued Examination concurrently herein, this Amendment be entered and that the previous rejections of the pending claims be withdrawn. Claims 1-19, 34-46, 51-60, and 66-69 are in condition for allowance. Favorable consideration and timely allowance of this application are respectfully requested.

Amendments to the claims are being made solely to expedite prosecution of the present application and do not constitute an acquiescence to any of the rejections by the Examiner.

Applicant authorizes the Commissioner to charge any fees and/or credit any overpayments associated with this paper to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-34000.

Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, or in the attached Petition, Applicant requests such extension and authorizes the charging of the extension fee to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-34000.

Respectfully submitted,

Date

4/20/06


Allan Fanucci (Reg. No. 30,256)

WINSTON & STRAWN LLP
CUSTOMER NO. 28763
(212) 294-3311